

(c) *Terms and conditions*—(1) *General*. Subject to the provisions of this paragraph (c), a Bank, in its discretion, shall determine whether, and on what terms, it will make advances to a housing associate.

(2) *Advance pricing*. (i) A Bank shall price advances to housing associates in accordance with the requirements for pricing advances to members set forth in §950.3(b). Wherever the term “member” appears in §950.3(b), the term shall be construed also to mean “housing associate.”

(ii) A Bank shall apply the pricing criteria identified in §950.5(b)(2) equally to all of its member and housing associate borrowers.

(3) *Limit on advances*. The principal amount of any advance made to a housing associate may not exceed 90 percent of the unpaid principal of the mortgage loans or securities pledged as security for the advance. This limit does not apply to an advance made to a housing associate under paragraph (b)(2) of this section.

(d) *Transaction accounts*. Solely for the purpose of facilitating the making of advances to a housing associate, a Bank may establish a transaction account for each housing associate.

(e) *Loss of eligibility*—(1) *Notification of status changes*. A Bank shall require a housing associate that applies for an advance to agree in writing that it will promptly inform the Bank of any change in its status as a housing associate.

(2) *Verification of eligibility*. A Bank may, from time to time, require a housing associate to provide evidence that it continues to satisfy all of the eligibility requirements of the Act, this subpart and part 926 of this chapter.

(3) *Loss of eligibility*. A Bank shall not extend a new advance or renew an existing advance to a housing associate that no longer meets the eligibility requirements of the Act, this subpart and part 926 of this chapter until the entity has provided evidence satisfactory to

the Bank that it is in compliance with such requirements.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069-0005 with an expiration date of November 30, 2002.)

[58 FR 29469, May 20, 1993, as amended by 65 FR 203, Jan. 4, 2000; 65 FR 8263, Feb. 18, 2000. Redesignated and amended at 65 FR 44430, July 18, 2000; 67 FR 12851, Mar. 20, 2002]

Subpart C—Advances to Out-of-District Members and Housing Associates

§950.25 Advances to out-of-district members and housing associates.

(a) *Establishment of creditor/debtor relationship*. Any Bank may become a creditor to a member or housing associate of another Bank through the purchase of an outstanding advance, or a participation interest therein, from the other Bank, or through an arrangement with the other Bank that provides for the establishment of such a creditor/debtor relationship at the time an advance is made.

(b) *Applicability of advances requirements*. Any creditor/debtor relationship established pursuant to paragraph (a) of this section shall be subject to all of the provisions of this part that would apply to an advance made by a Bank to its own members or housing associates.

[65 FR 43981, July 17, 2000; 65 FR 46049, July 26, 2000, as amended at 67 FR 12852, Mar. 20, 2002]

PART 951—AFFORDABLE HOUSING PROGRAM

Sec.

951.1 Definitions.

951.2 Required annual AHP contributions.

951.3 Operation of Program and adoption of AHP implementation plan.

951.4 Advisory Councils.

951.5 Minimum eligibility standards for AHP projects.

951.6 Procedure for approval of applications for funding.

951.7 Modifications of applications prior to or after project completion.

951.8 Procedure for funding.

§ 951.1

12 CFR Ch. IX (1–1–04 Edition)

- 951.10 Initial monitoring requirements.
- 951.11 Long-term monitoring requirements.
- 951.12 Remedial actions for noncompliance.
- 951.13 Agreements.
- 951.14 Temporary suspension of AHP contributions.
- 951.15 Affordable Housing Reserve Fund.
- 951.16 Application to existing AHP projects.

AUTHORITY: 12 U.S.C. 1430(j).

SOURCE: 62 FR 41828, Aug. 4, 1997, unless otherwise noted. Redesignated at 65 FR 8256, Feb. 18, 2000.

EDITORIAL NOTE: Nomenclature changes appear at 66 FR 50301, Oct. 3, 2001.

§ 951.1 Definitions.

As used in this part:

Affordable means that the rent charged for a unit which is to be reserved for occupancy by a household with an income at or below 80 percent of the median income for the area, does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom).

Cost of funds means, for purposes of a subsidized advance, the estimated cost of issuing Bank System consolidated obligations with maturities comparable to that of the subsidized advance.

Direct subsidy means an AHP subsidy in the form of a direct cash payment, but does not include homeownership set-aside funds.

Family member means any individual related to a person by blood, marriage or adoption.

Habitable means suitable for occupancy, taking into account local health, safety, and building codes.

Homeownership set-aside funds means funds provided to a member by a Bank pursuant to a Bank's homeownership set-aside program.

Low-or moderate-income household. (1) *Owner-occupied projects*. For purposes of an owner-occupied project, *low-or moderate-income household* means a household which, at the time it is qualified by the sponsor for participation in the project, has an income of 80 percent or less of the median income for the area.

(2) *Rental projects*. (i) *In general*. For purposes of a rental project, *low-or*

moderate-income household means a household which, upon initial occupancy of a rental unit, has an income at or below 80 percent of the median income for the area.

(ii) *Housing with current occupants*. In the case of projects involving the purchase or rehabilitation of rental housing with current occupants, *low- or moderate-income household* means an occupying household with an income at or below 80 percent of the median income for the area at the time an application for AHP subsidy is submitted to the Bank.

(3) *Family-size adjustment*. The income limit for *low-or moderate-income households* may be adjusted for family size in accordance with the methodology of the applicable median income standard.

Habitable means suitable for occupancy, taking into account local health, safety and building codes.

Low-or moderate-income neighborhood means any neighborhood in which 51 percent or more of the households have incomes at or below 80 percent of the median income for the area.

Median income for the area. (1) *Owner-occupied projects*. A Bank shall identify in its AHP implementation plan one or more of the following median income standards from which all owner-occupied projects may choose for purposes of the AHP:

(i) The median income for the area, as published annually by HUD;

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

(iii) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;

(iv) The median income for the area, as published by the United States Department of Agriculture; or

(v) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the AHP.

(2) *Rental projects*. A Bank shall identify in its AHP implementation plan

Federal Housing Finance Board

§ 951.1

one or more of the following median income standards from which all rental projects may choose for purposes of the AHP:

(i) The median income for the area, as published annually by HUD; or

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

(iii) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the AHP.

(3) *Procedure for approval.* Prior to requesting approval by the Board of Directors of a median income standard, a Bank shall amend its AHP implementation plan to permit the use of such standard, conditioned on Board of Directors approval. Requests for approval of median income standards shall receive prompt consideration by the Board of Directors.

Net earnings of a Bank means the net earnings of a Bank for a calendar year after deducting the Bank's annual contribution to the Resolution Funding Corporation required under sections 21A or 21B of the Act (12 U.S.C. 1441a, 1441b), and before declaring any dividend under section 16 of the Act (12 U.S.C. 1436).

Owner-occupied project means a project involving the purchase, construction, or rehabilitation of owner-occupied housing, including condominiums and cooperative housing, by or for very low-or low-or moderate-income households.

Owner-occupied unit means a unit in an owner-occupied project. Housing with two to four dwelling units consisting of one owner-occupied unit and one or more rental units shall be considered a single owner-occupied unit.

Program means the Affordable Housing Program.

Rental project means a project involving the purchase, construction, or rehabilitation of rental housing, including overnight shelters and transitional housing for homeless households and mutual housing, where at least 20 percent of the units in the project are occupied by and affordable for very low-income households.

Retention period means:

(1) 5 years from closing for an AHP-assisted owner-occupied unit; and

(2) 15 years from the date of project completion for a rental project.

Sponsor means a not-for-profit or for-profit organization or public entity that:

(1) Has an ownership interest (including any partnership interest) in a rental project; or

(2) Is integrally involved in an owner-occupied project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the units.

Subsidized advance means an advance to a member at an interest rate reduced below the Bank's cost of funds, by use of a subsidy.

Subsidy means:

(1) A direct subsidy, provided that if a direct subsidy is used to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the subsidy shall equal the net present value of the interest foregone from making the loan below the lender's market interest rate (calculated as of the date the AHP application is submitted to the Bank, and subject to adjustment under § 951.8(c)(3));

(2) The net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds, determined as of the earlier of the date of disbursement of the subsidized advance or the date prior to disbursement on which the Bank first manages the funding to support the subsidized advance through its asset/liability management system, or otherwise; or

(3) Homeownership set-aside funds.

Very low-income household. (1) *Owner-occupied projects.* For purposes of an owner-occupied project, *very low-income household* means a household which, at the time it is qualified by the sponsor for participation in the project, has an income at or below 50 percent of the median income for the area.

(2) *Rental projects.* (i) *In general.* For purposes of a rental project, *very low-income household* means a household which, upon initial occupancy of a rental unit, has an income at or below

§ 951.2

12 CFR Ch. IX (1–1–04 Edition)

50 percent of the median income for the area.

(ii) *Housing with current occupants.* In the case of projects involving the purchase or rehabilitation of rental housing with current occupants, *very low-income household* means an occupying household with an income at or below 50 percent of the median income for the area at the time an application for AHP subsidy is submitted to the Bank.

(3) *Family-size adjustment.* The income limit for *very low-income households* may be adjusted for family size in accordance with the methodology of the applicable median income standard.

Visitable means, in either owner-occupied or rental housing, at least one entrance is at-grade (no steps) and approached by an accessible route such as a sidewalk, and the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, offering 32 inches of clear passage space.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069-0006 with an expiration date of June 30, 2004)

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27672, May 20, 1998; 64 FR 24027, May 5, 1999; 65 FR 5419, Feb. 4, 2000; 65 FR 8263, Feb. 18, 2000; 65 FR 17437, Apr. 3, 2000; 67 FR 12852, Mar. 20, 2002; 67 FR 18804, Apr. 17, 2002]

§ 951.2 Required annual AHP contributions.

Each Bank shall contribute annually to its Program the greater of:

(a) 10 percent of the Bank's net earnings for the previous year; or

(b) That Bank's pro rata share of an aggregate of \$100 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year.

§ 951.3 Operation of Program and adoption of AHP implementation plan.

(a) *Allocation of AHP contributions*—(1) *Homeownership set-aside programs.* (i) *Homeownership set-aside programs subject to \$3.0 million or 25 percent cap.* Each Bank, after consultation with its Advisory Council, and pursuant to written policies adopted by the Bank's board of directors, may set aside annually, in

the aggregate, up to the greater of \$3.0 million or 25 percent of its annual required AHP contribution to provide funds to members participating in the Bank's homeownership set-aside programs, pursuant to the requirements of this part. In cases where the amount of homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, a Bank may allocate up to the greater of \$3.0 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs pursuant to written policies adopted by the Bank's board of directors. A Bank may establish one or more homeownership set-aside programs pursuant to written policies adopted by the Bank's board of directors.

(ii) *Additional first-time homebuyer set-aside program subject to \$1.5 million or 10 percent cap.* In addition to the authority provided under paragraph (a)(1)(i) of this section, each Bank, after consultation with its Advisory Council, and pursuant to written policies adopted by the Bank's board of directors, may set aside annually up to the greater of \$1.5 million or 10 percent of its annual required AHP contribution to provide funds to members participating in a Bank homeownership set-aside program to assist first-time homebuyers, pursuant to the requirements of this part. In cases where the amount of homeownership set-aside funds applied for by members in a given year under such a program exceeds the amount available for that year, a Bank may allocate up to the greater of \$1.5 million or 10 percent of its annual required AHP contribution for the subsequent year to the current year's program pursuant to written policies adopted by the Bank's board of directors.

(iii) *Requirements applicable to all homeownership set-aside programs.* Beginning in 2003 and for subsequent years, the maximum dollar limits set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the Department of Labor. Each year, as soon as practicable after

Federal Housing Finance Board

§ 951.3

the publication of the previous year's CPI, the Finance Board shall publish notice by FEDERAL REGISTER, distribution of a memorandum, or otherwise, of the CPI-adjusted limits on the maximum set-aside dollar amount. A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting its homeownership set-aside program policies.

(2) *Competitive application program.* That portion of a Bank's required annual AHP contribution that is not set aside to fund homeownership set-aside programs shall be provided to members through a competitive application program, pursuant to the requirements of this part. A Bank may allocate up to the greater of \$3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's competitive application program. Beginning in 2002 and for subsequent years, the maximum dollar limit set forth in this paragraph (a)(2) shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by FEDERAL REGISTER, distribution of a memorandum, or otherwise, of the CPI-adjusted limit on the maximum competitive application dollar amount.

(b) *AHP implementation plan*—(1) *Adoption of plan.* Each Bank's board of directors shall adopt a written AHP implementation plan which shall set forth:

(i) The applicable median income standard or standards, adopted by the Bank consistent with the definition of *median income for the area* in § 951.1;

(ii) The requirements for any homeownership set-aside programs adopted by the Bank pursuant to paragraph (a)(1) of this section;

(iii) The Bank's project feasibility guidelines, adopted consistent with § 951.5(b)(2);

(iv) The Bank's schedule for AHP funding periods;

(v) Any additional District eligibility requirement, adopted by the Bank pursuant to § 951.5(b)(10);

(vi) The Bank's scoring guidelines, adopted by the Bank consistent with § 951.6(b)(4);

(vii) The Bank's time limits on use of AHP subsidies and procedures for verifying compliance upon disbursement of AHP subsidies pursuant to § 951.8;

(viii) The Bank's procedures for carrying out its monitoring obligations under §§ 951.10(c) and 951.11; and

(ix) Any requirements, including time limits, for re-use of repaid AHP direct subsidy, adopted by the Bank pursuant to § 951.12(e)(2).

(2) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting the AHP implementation plan, or any subsequent amendments thereto.

(3) *Advisory Council review.* Prior to adoption of the Bank's AHP implementation plan, and any subsequent amendments thereto, the Bank shall provide its Advisory Council an opportunity to review the plan and any subsequent amendments, and the Advisory Council shall provide its recommendations to the Bank's board of directors.

(4) *Submission of plan amendments to the Finance Board.* A Bank shall submit any amendments of its AHP implementation plan to the Finance Board within 30 days after the date the Bank's board of directors approves such amendments.

(5) *Public Access.* A Bank's initial AHP implementation plan, and any subsequent amendments, shall be made available to members of the public, upon request.

(c) *Conflicts of interest*—(1) *Bank directors and employees.* Each Bank's board of directors shall adopt a written policy providing that if a Bank director or employee, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Bank director or employee shall not participate in or attempt to influence decisions by the

Bank regarding the evaluation, approval, funding, monitoring or any remedial process for such project.

(2) *Advisory Council members.* Each Bank's board of directors shall adopt a written policy providing that if an Advisory Council member, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Advisory Council member shall not participate in or attempt to influence decisions by the Bank regarding the approval for such project.

(3) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt conflicts of interest policies.

(d) *Reporting.* Each Bank shall provide such reports and documentation concerning its Program as the Finance Board may request from time to time.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069-0006 with an expiration date of June 30, 2004)

[62 FR 41828, Aug. 4, 1997, as amended at 64 FR 24027, May 5, 1999; 65 FR 5419, Feb. 4, 2000; 65 FR 8263, Feb. 18, 2000; 66 FR 50301, Oct. 3, 2001; 67 FR 18804, Apr. 17, 2002; 67 FR 58981, Sept. 19, 2002]

§ 951.4 Advisory Councils.

(a) *In general.* Each Bank's board of directors shall appoint an Advisory Council of from 7 to 15 persons who reside in the Bank's District and are drawn from community and not-for-profit organizations actively involved in providing or promoting low- and moderate-income housing and community and not-for-profit organizations actively involved in providing or promoting community lending, in the District.

(b) *Nominations and appointments.* Each Bank shall solicit nominations for membership on the Advisory Council from community and not-for-profit organizations pursuant to a nomination process that is as broad and as participatory as possible, allowing sufficient time for responses. The Bank's board of directors shall appoint Advisory Council members giving consider-

ation to the size of the Bank's District and the diversity of low- and moderate-income housing and community lending needs and activities within the District.

(c) *Diversity of membership.* In appointing the Advisory Council, a Bank's board of directors shall ensure that the membership includes persons drawn from a diverse range of organizations, provided that representatives of no one group shall constitute an undue proportion of the membership of the Advisory Council.

(d) *Terms of Advisory Council members.* Advisory Council members shall be appointed by the Bank's board of directors to serve for terms of three years, and such terms shall be staggered to provide continuity in experience and service to the Advisory Council. An Advisory Council member appointed to fill a vacancy shall be appointed for the unexpired term of his or her predecessor in office. No Advisory Council member may be appointed to serve for more than three consecutive terms. Appointments for the unexpired term of a predecessor shall not count toward the three-term limit.

(e) *Election of officers.* Each Advisory Council may elect from among its members a chairperson, a vice chairperson, and any other officers the Advisory Council deems appropriate.

(f) *Duties.*—(1) *Meetings with the Banks.* Representatives of the board of directors of the Bank shall meet with the Advisory Council at least quarterly to obtain the Advisory Council's advice on ways in which the Bank can better carry out its housing finance and community lending mission, including, but not limited to, advice on the low- and moderate-income housing and community lending programs and needs in the Bank's District, and on the use of AHP subsidies, Bank advances, and other Bank credit products for these purposes.

(2) *Summary of AHP applications.* The Bank shall comply with requests from the Advisory Council for summary information regarding AHP applications from prior funding periods.

(3) *Annual report to the Finance Board.* Each Advisory Council shall submit to the Finance Board annually by March 1 its analysis of the low- and moderate-

Federal Housing Finance Board

§ 951.5

income housing and community lending activity of the Bank by which it is appointed.

(g) *Expenses.* The Bank shall pay Advisory Council members' travel expenses, including transportation and subsistence, for each day devoted to attending meetings with representatives of the board of directors of the Bank and meetings requested by the Finance Board.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069-0006 with an expiration date of June 30, 2004)

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27672, May 20, 1998; 65 FR 5419, Feb. 4, 2000; 66 FR 50302, Oct. 3, 2001; 67 FR 12852, Mar. 20, 2002; 67 FR 15011, Mar. 28, 2002]

§ 951.5 Minimum eligibility standards for AHP projects.

(a) *Homeownership set-aside programs.* A Bank's homeownership set-aside programs must meet the following requirements:

(1) Homeownership set-aside funds must be provided to members pursuant to allocation criteria established by the Bank;

(2) Members must provide homeownership set-aside funds only to households that:

(i) Are low-or moderate-income households, as defined in § 951.1;

(ii) Complete a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization recognized as experienced in homebuyer or homeowner counseling, respectively; and

(iii) Meet the first-time homebuyer requirement, in the case of households receiving funds pursuant to a first-time homebuyer set-aside program established pursuant to § 951.3(a)(1)(ii), and meet such other eligibility criteria that may be established by the Bank, such as a matching funds requirement or criteria that give priority for the purchase or rehabilitation of housing in particular areas or as part of a disaster relief effort, in the case of households receiving funds pursuant to homeownership set-aside programs established pursuant to § 951.3(a)(1)(i) or (ii);

(3) Members must provide homeownership set-aside funds to households as a grant, in an amount up to a maximum of \$15,000 per household, as established by the Bank, which limit shall apply to all households;

(4) Households must use homeownership set-aside funds to pay for down-payment, closing cost, counseling, or rehabilitation assistance in connection with the household's purchase or rehabilitation of an owner-occupied housing unit, including a condominium or cooperative housing unit, to be used as the household's primary residence;

(5) A housing unit purchased or rehabilitated using homeownership set-aside funds must be subject to a retention agreement described in § 951.13(d)(1);

(6) If a member is providing mortgage financing to a participating household, the member must provide financial or other incentives in connection with such mortgage financing, and the rate of interest, points, fees, and any other charges by the member must not exceed a reasonable market rate of interest, points, fees, and other charges for a loan of similar maturity, terms, and risk;

(7) Homeownership set-aside funds may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit;

(ii) The cost of the counseling has not been covered by another funding source, including the member; and

(8) Homeownership set-aside funds must be drawn down and used by eligible households within the period of time specified by the Bank in its AHP implementation plan.

(b) *Competitive application program.* Projects receiving AHP subsidies pursuant to a Bank's competitive application program must meet the eligibility requirements of this paragraph (b).

(1) *Owner-occupied or rental housing.* A project must be either an owner-occupied project or a rental project, as defined, respectively, in § 951.1.

(2) *Project feasibility and need for subsidy—*(i) *Sources and uses of funds.* The project's estimated uses of funds must equal its estimated sources of funds, as

reflected in the project's development budget. A project's sources of funds must include:

(A) Estimates of funds the project sponsor intends to obtain from other sources, but which have not yet been committed to the project; and

(B) Estimates of the market value of in-kind donations and volunteer professional labor or services committed to the project, but not the value of sweat-equity.

(ii) *Project costs*—(A) *In general.* Project costs, as reflected in the project's development budget, must be reasonable and customary, in accordance with the Bank's project feasibility guidelines, in light of:

(1) Industry standards for the location of the project; and

(2) The long-term financial needs of the project.

(B) *Cost of property and services provided by a member.* The purchase price of property or services, as reflected in the project's development budget, sold to the project by a member providing AHP subsidy to the project, or, in the case of property, upon which such member holds a mortgage or lien, may not exceed the market value of such property or services as of the date the purchase price for the property or services was agreed upon. In the case of real estate owned property sold to a project by a member providing AHP subsidy to a project, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the "as-is" or "as-rehabilitated" value of the property, whichever is appropriate, as reflected in an independent appraisal of the property performed by a State certified or licensed appraiser, as defined in 12 CFR 564.2(j) and (k), within six months prior to the date the Bank disburses AHP subsidy to the project.

(iii) *Operational feasibility and need for subsidy.* The project must be operationally feasible, in accordance with the Bank's project feasibility guidelines, based on relevant factors including, but not limited to, applicable financial ratios, geographic location of the project, needs of tenants, and other non-financial project characteristics. The requested AHP subsidy must be

necessary for the financial feasibility of the project, as currently structured, and the rate of interest, points, fees, and any other charges for all loans financing the project must not exceed a market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

(3) *Timing of subsidy use.* The AHP subsidy must be likely to be drawn down by the project or used by the project to procure other financing commitments within 12 months of the date of approval of the application for subsidy funding the project.

(4) *Prepayment, cancellation, and processing fees.* The project must not use AHP subsidies to pay for:

(i) Prepayment fees imposed by a Bank on a member for a subsidized advance that is prepaid, unless, subsequent to such prepayment, the project will continue to comply with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part for the duration of the original retention period, and any unused subsidy is returned to the Bank and made available for other AHP projects;

(ii) Cancellation fees and penalties imposed by a Bank on a member for a subsidized advance commitment that is canceled; or

(iii) Processing fees charged by members for providing direct subsidies to a project.

(5) *Counseling costs.* AHP subsidies may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

(ii) The cost of the counseling has not been covered by another funding source, including the member.

(6) *Refinancing.* If the project uses AHP subsidies to refinance an existing single-family or multifamily mortgage loan, the equity proceeds of the refinancing must be used only for the purchase, construction, or rehabilitation of housing units meeting the eligibility requirements of this paragraph (b).

(7) *Retention*—(i) *Owner-occupied projects.* The project's AHP-assisted

Federal Housing Finance Board

§ 951.6

units are or are committed to be subject to a retention agreement described in § 951.3(c)(4) or (d)(1).

(ii) *Rental projects.* AHP-assisted rental projects are or are committed to be subject to a retention agreement described in § 951.3(c)(5) or (d)(2).

(8) *Project sponsor qualifications.* A project's sponsor must be qualified and able to perform its responsibilities as committed to in the application for subsidy funding the project.

(9) *Fair housing.* The project, as proposed, must comply with applicable Federal and State laws on fair housing and housing accessibility, including, but not limited to, the Fair Housing Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Architectural Barriers Act of 1969, and must demonstrate how the project will be affirmatively marketed.

(10) *District eligibility requirements.* (i) A project receiving AHP subsidies may be required by a Bank to meet one or more of the following additional eligibility requirements adopted by a Bank's board of directors, after consultation with its Advisory Council:

(A) A requirement that the amount of subsidy requested for the project does not exceed limits established by the Bank as to the maximum amount of AHP subsidy available per member each year; or per member, per project, or per project unit in a single funding period;

(B) A requirement that the project is located in the Bank's District; or

(C) A requirement that the member submitting the application has made use of a minimum amount of a credit product offered by the Bank, other than AHP or CIP credit products, within the previous 12 months, provided that such a minimum threshold for credit product usage established by a Bank shall not exceed 1.5 percent of a member's total assets, and all members shall have access to some amount of AHP subsidy, as determined by the Bank, regardless of whether they meet the Bank's minimum threshold for credit product usage.

(ii) Any limit on the amount of AHP subsidy available per member must result in equal amounts of AHP subsidy

available to all members receiving subsidy pursuant to such limit.

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27672, May 20, 1998; 64 FR 23015, Apr. 29, 1999; 64 FR 24027, May 5, 1999; 65 FR 8263, Feb. 18, 2000; 66 FR 50302, Oct. 3, 2001; 67 FR 12852, Mar. 20, 2002; 67 FR 58982, Sept. 19, 2002]

§ 951.6 Procedure for approval of applications for funding.

(a) *Homeownership set-aside programs.* A Bank shall accept applications for homeownership set-aside funds from members and may, in its discretion, accept applications from institutions with pending applications for membership in the Bank. The Bank shall approve applications in accordance with the Bank's criteria governing the allocation of funds.

(b) *Competitive application program—*
(1) *Funding periods; amounts available.* A Bank shall accept applications for funding under its competitive application program from members and may, in its discretion, accept applications from institutions with pending applications for membership in the Bank. A Bank may accept applications for funding during a specified number of funding periods each year, as determined by the Bank.

(2) *Submission of applications.* A Bank shall require applicants for AHP subsidies to submit information sufficient for the Bank to:

(i) Determine that the proposed AHP project meets the eligibility requirements of § 951.5(b); and

(ii) Evaluate the application pursuant to the scoring criteria in paragraph (b)(4) of this section.

(3) *Review of applications for project eligibility.* A Bank shall review applications to determine that the proposed AHP project meets the eligibility requirements of § 951.5(b).

(4) *Scoring of applications—*(i) *In general.* A Bank shall not adopt additional scoring criteria or point allocations, except as specifically authorized under this paragraph (b)(4). A Bank shall adopt written guidelines implementing the scoring requirements of this paragraph (b)(4).

(ii) *Point allocations.* A Bank shall allocate 100 points among the nine scoring criteria identified in paragraph (b)(4)(iv) of this section. The scoring

criterion for targeting identified in paragraph (b)(4)(iv)(C) of this section shall be allocated at least 20 points. The remaining scoring criteria shall be allocated at least five points each.

(iii) *Satisfaction of scoring criteria.* A Bank shall designate each scoring criterion as either a fixed-point or a variable-point criterion. Variable-point criteria are those where there are varying degrees to which an application can satisfy the criteria. The number of points that may be awarded to an application for meeting a variable-point criterion will vary, depending on the extent to which the application satisfies the criterion, compared to the other applications being scored. A Bank shall designate the targeting and subsidy-per-unit scoring criteria identified in paragraphs (b)(4)(iv)(C) and (H), respectively, of this section as variable-point criteria. The application(s) best achieving each variable-point criterion shall receive the maximum point score available for that criterion, with the remaining applications scored on a declining scale. Fixed-point criteria are those which cannot be satisfied in varying degrees and are either satisfied, or not. An application meeting a fixed-point criterion shall be awarded the total number of points allocated to that criterion.

(iv) *Scoring criteria.* An application for a proposed project may receive points based on satisfaction of the nine scoring criteria set forth in this paragraph (b)(4)(iv).

(A) *Use of donated or conveyed government-owned or other properties.* The creation of housing using a significant proportion of:

(1) Land or units donated or conveyed by the Federal government or any agency or instrumentality thereof; or

(2) Land or units donated or conveyed by any other party for an amount significantly below the fair market value of the property, as defined by the Bank in its AHP implementation plan.

(B) *Sponsorship by a not-for-profit organization or government entity.* Project sponsorship by a not-for-profit organization, a state or political subdivision of a state, a state housing agency, a local housing authority, a Native American Tribe, an Alaskan Native

Village, or the government entity for Native Hawaiian Home Lands.

(C) *Targeting.* The extent to which a project creates housing for very low- and low- or moderate-income households.

(1) *Rental projects.* An application for a rental project shall be awarded the maximum number of points available under this scoring criterion if 60 percent or more of the units in the project are reserved for occupancy by households with incomes at or below 50 percent of the median income for the area. Applications for projects with less than 60 percent of the units reserved for occupancy by households with incomes at or below 50 percent of the median income for the area shall be awarded points on a declining scale based on the percentage of units in a project that are reserved for households with incomes at or below 50 percent of the median income for the area, and on the percentage of the remaining units reserved for households with incomes at or below 80 percent of the median income for the area. In order to facilitate reliance on monitoring by a federal, state, or local government entity providing funds or allocating federal Low-Income Housing Tax Credits to a proposed project, a Bank, in its discretion, may score each project according to the targeting commitments made by the project to such entity, and the Bank shall include such scoring practice in its AHP implementation plan.

(2) *Owner-occupied projects.* Applications for owner-occupied projects shall be awarded points based on a declining scale, with projects having the highest percentage of units targeted to households with the lowest percentage of median income for the area awarded the highest number of points.

(3) *Separate scoring.* For purposes of this scoring criterion, applications for owner-occupied projects and rental projects may be scored separately.

(D) *Housing for homeless households.* The creation of rental housing, excluding overnight shelters, reserving at least 20 percent of the units for homeless households, the creation of transitional housing for homeless households permitting a minimum of six months occupancy, or the creation of permanent owner-occupied housing reserving

Federal Housing Finance Board

§951.6

at least 20 percent of the units for homeless households. For purposes of this paragraph, the term “homeless households” shall have the meaning as defined by the Bank in its AHP implementation plan.

(E) *Promotion of empowerment.* The provision of housing in combination with a program offering: employment; education; training; homebuyer, homeownership or tenant counseling; daycare services; resident involvement in decisionmaking affecting the creation or operation of the project; or other services that assist residents to move toward better economic opportunities, such as welfare to work initiatives.

(F) *First District priority.* The satisfaction of one of the following criteria, or one of a number of the following criteria, as recommended by the Bank’s Advisory Council and adopted by the Bank’s board of directors and set forth in the Bank’s AHP implementation plan, as long as the total points available for meeting the criterion or criteria adopted under this category do not exceed the total points allocated to this category:

(1) *Special needs.* The creation of housing in which at least 20 percent of the units are reserved for occupancy by households with special needs, such as the elderly, mentally or physically disabled persons, persons recovering from physical abuse or alcohol or drug abuse, or persons with AIDS; or the creation of housing that is “visitable” by persons with physical disabilities who are not occupants of such housing;

(2) *Community development.* The creation of housing meeting housing needs documented as part of a community revitalization or economic development strategy approved by a unit of a state or local government;

(3) *First-time homebuyers.* The financing of housing for first-time homebuyers;

(4) *Member financial participation.* Member financial participation (excluding the pass-through of AHP subsidy) in the project, such as providing market rate or concessionary financing, fee waivers, or donations;

(5) *Disaster areas.* The financing of housing located in federally declared disaster areas;

(6) *Rural.* The financing of housing located in rural areas;

(7) *Urban.* The financing of urban infill or urban rehabilitation housing;

(8) *Economic diversity.* The creation of housing that is part of a strategy to end isolation of very low-income households by providing economic diversity through mixed-income housing in low- or moderate-income neighborhoods, or providing very low- or low- or moderate-income households with housing opportunities in neighborhoods or cities where the median income equals or exceeds the median income for the larger surrounding area—such as the city, county, or Primary Metropolitan Statistical Area—in which the neighborhood or city is located;

(9) *Fair housing remedy.* The financing of housing as part of a remedy undertaken by a jurisdiction adjudicated by a federal, state, or local court to be in violation of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), the Fair Housing Act (42 U.S.C. 3601 *et seq.*), or any other federal, state, or local fair housing law, or as part of a settlement of such claims;

(10) *Community involvement.* Demonstrated support for the project by local government, other than as a project sponsor, in the form of property tax deferment or abatement, zoning changes or variances, infrastructure improvements, fee waivers, or other similar forms of non-cash assistance, or demonstrated support for the project by community organizations or individuals, other than as project sponsors, through the commitment by such entities or individuals of donated goods and services, or volunteer labor;

(11) *Lender consortia.* The involvement of financing by a consortium of at least two financial institutions; or

(12) *In-District projects.* The creation of housing located in the Bank’s District.

(G) *Second District priority—defined housing need in the District.* The satisfaction of a housing need in the Bank’s District, as defined and recommended by the Bank’s Advisory Council and adopted by the Bank’s board of directors and set forth in the Bank’s AHP implementation plan. The Bank may, but is not required to, use one of the criteria listed in paragraph (b)(4)(iv)(F)

§951.7

12 CFR Ch. IX (1–1–04 Edition)

of this section, provided it is different from the criterion or criteria adopted by the Bank under paragraph (b)(4)(iv)(F) of this section.

(H) *AHP subsidy per unit.* The extent to which a project proposes to use the least amount of AHP subsidy per AHP-targeted unit. In the case of an application for a project financed by a subsidized advance, the total amount of AHP subsidy used by the project shall be estimated based on the Bank's cost of funds as of the date on which all applications are due for the funding period in which the application is submitted. For purposes of this scoring criterion, applications for owner-occupied projects and rental projects may be scored separately.

(I) *Community stability.* The promotion of community stability, such as by rehabilitating vacant or abandoned properties, being an integral part of a neighborhood stabilization plan approved by a unit of state or local government, and not displacing low- or moderate-income households, or if such displacement will occur, assuring that such households will be assisted to minimize the impact of such displacement.

(5) *Approval of applications—(i) Approval by Bank's board.* The board of directors of each Bank shall approve applications in descending order starting with the highest scoring application until the total funding amount for the particular funding period, except for any amount insufficient to fund the next highest scoring application, has been allocated. The board of directors also shall approve at least the next four highest scoring applications as alternates and, within one year of approval, may fund such alternates if any previously committed AHP subsidies become available.

(ii) *No delegation.* A Bank's board of directors shall not delegate to Bank of-

ficers or other Bank employees the responsibility to approve or disapprove AHP applications.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069-0006 with an expiration date of June 30, 2004)

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§951.7 Modifications of applications prior to or after project completion.

(a) *Modification procedure.* If, prior to or after final disbursement of funds to a project from all funding sources, there is or will be a change in the project that would change the score that the project application received in the funding period in which it was originally scored and approved, had the changed facts been operative at that time, a Bank, in its discretion, may approve in writing a modification to the terms of the approved application, provided that:

(1) The project, incorporating any such changes, would meet the eligibility requirements of §951.5(b);

(2) The application, as reflective of such changes, continues to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank; and

(3) There is good cause for the modification.

(b) *Modifications involving a subsidy increase.* Modifications involving an increase in AHP subsidy shall be approved or disapproved by a Bank's board of directors. The authority to approve or disapprove such requests shall

Federal Housing Finance Board

§ 951.8

not be delegated to Bank officers or other Bank employees.

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§ 951.8 Procedure for funding.

(a) *Disbursement of subsidies to members.* (1) A Bank may disburse AHP subsidies only to institutions that are members of the Bank at the time they request a draw-down of subsidy.

(2) If an institution with an approved application for AHP subsidy fails to obtain or loses its membership in a Bank, the Bank may disburse subsidies to a member of such Bank to which the institution has transferred its obligations under the approved application, or the Bank may disburse subsidies through another Bank to a member of that Bank that has assumed the institution's obligations under the approved application.

(b) *Homeownership set-aside programs—* (1) *Time limit on use of subsidies.* If homeownership set-aside funds are not drawn down and used by eligible households within the period of time specified by the Bank in its AHP implementation plan, the Bank shall cancel the application for funds and make the funds available for other applicants for homeownership set-aside funds or for other AHP-eligible projects.

(2) *Member certification upon disbursement.* Prior to disbursement by a Bank to a member of homeownership set-aside funds, or prior to disbursement by a member of homeownership set-aside funds repaid to and retained by such member pursuant to a subsidy reuse program authorized by the Bank under § 951.12(e)(2), the Bank shall require the member to certify that:

(i) The funds received by the member will be provided to a household meeting the eligibility requirements of § 951.5(a)(2);

(ii) If the member is providing mortgage financing to the household, the member will provide financial or other incentives in connection with such

mortgage financing, and the rate of interest, points, fees, and any other charges by the member will not exceed a reasonable market rate of interest, points, fees, and other charges for a loan of similar maturity, terms, and risk; and

(iii) Funds received by the member for homebuyer counseling costs will be provided according to the requirements of § 951.5(a)(7).

(c) *Competitive application program—* (1) *Time limit on use of subsidies.* If AHP subsidies approved for a project under a Bank's competitive application program are not drawn down and used by the project within the period of time specified by the Bank in its AHP implementation plan, the Bank shall cancel its approval of the application for the subsidies and make the subsidies available for other AHP-eligible projects.

(2) *Compliance upon disbursement of subsidies.* A Bank shall verify prior to its initial disbursement of subsidies for an approved project, and prior to each disbursement thereafter, that the project meets the eligibility requirements of § 951.5(b) and all obligations committed to in the approved application.

(3) *Changes in approved AHP subsidy amount where a direct subsidy is used to write down prior to closing the principal amount or interest rate on a loan.* If a member is approved to receive a direct subsidy to write down prior to closing the principal amount or the interest rate on a loan to a project and the amount of subsidy required to maintain the debt service cost for the loan decreases from the amount of subsidy initially approved by the Bank due to a decrease in market interest rates between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank shall reduce the subsidy amount accordingly. If market interest rates rise between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank may, in its discretion, increase the subsidy amount accordingly.

(4) *AHP outlay adjustment.* If a Bank reduces the amount of AHP subsidy approved for a project, the amount of such reduction shall be returned to the Bank's AHP fund. If a Bank increases

the amount of AHP subsidy approved for a project, the amount of such increase shall be drawn first from any currently uncommitted or repaid AHP subsidies and then from the Bank's required AHP contribution for the next year.

(5) *Project sponsor notification of re-use of repaid AHP direct subsidy.* Prior to disbursement by a project sponsor of AHP direct subsidy repaid to and retained by such project sponsor pursuant to a subsidy re-use program authorized by the Bank under § 951.12(e)(2), the project sponsor shall provide written notice to the member and the Bank of its intent to disburse the repaid subsidy to a household satisfying the requirements of this part and the commitments in the approved AHP application.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069-0006 with an expiration date of June 30, 2004)

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§ 951.10 Initial monitoring requirements.

(a) *Requirements for project sponsors and owners—(1) Owner-occupied projects.* (i) During the period of construction or rehabilitation of an owner-occupied project, the project sponsor must report to the member semiannually on whether reasonable progress is being made towards completion of the project.

(ii) Where AHP subsidies are used to finance the purchase or rehabilitation of owner-occupied units, the project sponsor must maintain household income verification documentation available for review by the member or the Bank.

(2) *Rental projects.* (i) During the period of construction or rehabilitation of a rental project, the project owner must report to the member semiannually on whether reasonable progress is being made towards completion of the project.

(ii) Within the first year after project completion, the project owner must:

(A) Certify to the Bank that the services and activities committed to in the AHP application have been provided in connection with the project;

(B) Provide a list of actual tenant rents and incomes to the Bank and certify that:

(1) The tenant rents and incomes are accurate and in compliance with the rent and income targeting commitments made in the AHP application; and

(2) The project is habitable; and

(C) Maintain documentation regarding tenant rents and incomes and project habitability available for review by the Bank, to support such certifications.

(b) *Requirements for members—(1) Owner-occupied projects.* (i) During the period of construction or rehabilitation of an owner-occupied project, the member must take the steps necessary to determine whether reasonable progress is being made towards completion of the project and must report to the Bank semiannually on the status of the project.

(ii) Within one year after disbursement to a project of all approved AHP subsidies, or in the case of a re-use of repaid AHP direct subsidy pursuant to § 951.12(e)(2), within 60 days after receipt of a notice of disbursement of such repaid subsidy provided by a project sponsor pursuant to § 951.8(c)(5), the member must review the project documentation and certify to the Bank that:

(A) The AHP subsidies have been used according to the commitments made in the AHP application; and

(B) The AHP-assisted units are subject to deed restrictions or other legally enforceable retention agreements or mechanisms meeting the requirements of § 951.13(c)(4) or (d)(1);

(2) *Rental projects.* During the period of construction or rehabilitation of a rental project, the member must take the steps necessary to determine whether reasonable progress is being made towards completion of the project and must report to the Bank semiannually on the status of the project.

(c) *Requirements for Banks—(1) Owner-occupied projects.* Each Bank must take the steps necessary to determine, based

Federal Housing Finance Board

§ 951.11

on a review of the documentation for a sample of projects and units within one year of receiving the member certifications described in paragraph (b)(1)(ii) of this section, or, in the case of a re-use of repaid AHP direct subsidy pursuant to § 951.12(e)(2), based on a review of the documentation for the re-use upon receipt of the member certification for such re-use described in paragraph (b)(1)(ii) of this section, that:

(i) The incomes of the households that own the AHP-assisted units did not exceed the levels committed to in the AHP application at the time the households were qualified by the sponsor to participate in the project;

(ii) The AHP subsidies were used for eligible purposes, the project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines, and the subsidies were necessary for the financial feasibility of the project, as currently structured; and

(iii) The AHP-assisted units are subject to deed restrictions or other legally enforceable retention agreements or mechanisms meeting the requirements of § 951.13(c)(4) or (d)(1).

(2) *Rental projects.* Each Bank must take the steps necessary to determine that, based on a review of the documentation described in paragraph (a)(2)(ii) of this section within one year and 120 days after completion of a rental project:

(i) The services and activities committed to in the AHP application have been provided in connection with the project; and

(ii) The AHP subsidies were used for eligible purposes, the project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines, and the subsidies were necessary for the financial feasibility of the project, as currently structured.

(d) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application

as long as the rent charged remains affordable, as defined in § 951.1, for the household occupying the unit.

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§ 951.11 Long-term monitoring requirements.

(a) *Rental projects.* For purposes of monitoring a rental project, Banks, members, and project owners shall carry out their long-term monitoring obligations pursuant to one of the three methods set forth in this paragraph (a).

(1) *Reliance on monitoring by a federal, state or local government entity.* For those projects that receive funds from, or are allocated federal Low-Income Housing Tax Credits by, a federal, state, or local government entity, a Bank may rely on the monitoring by such entity if:

(i) The income targeting requirements, the rent requirements, and the retention period monitored by such entity for purposes of its own program are the same as, or more restrictive than, those committed to in the AHP application;

(ii) The entity agrees to inform the Bank of instances where tenant rents or incomes are found to be in non-compliance with the requirements being monitored by the entity or where the project is not habitable; and

(iii) The entity has demonstrated and continues to demonstrate to the Bank its ability to carry out monitoring under its own program, and the Bank does not have information that such monitoring is not occurring or is inadequate.

(2) *Reliance on monitoring of AHP application commitments by a contractor.* For those projects that receive funds from, or are allocated federal Low-Income Housing Tax Credits by, a federal, state, or local government entity that monitors for income targeting requirements, rent requirements, or retention periods under its own program

that are less restrictive than those committed to in the project's AHP application, a Bank, in its discretion, may rely on the monitoring by such entity if:

(i) The entity agrees to monitor the income targeting requirements, the rent requirements, and the retention period committed to in the AHP application;

(ii) The entity agrees to inform the Bank of instances where tenant rents or incomes are found to be in non-compliance with the requirements committed to in the AHP application or where the project is not habitable; and

(iii) The entity has demonstrated and continues to demonstrate to the Bank its ability to carry out such monitoring, and the Bank does not have information that such monitoring is not occurring or is inadequate.

(3) *Long-term monitoring by the Banks, members, and project owners.* In cases where a Bank does not rely on monitoring by a federal, state, or local government entity pursuant to paragraphs (a)(1) or (a)(2) of this section, the Bank, members, and project owners shall monitor rental projects according to the requirements in this paragraph (a)(3).

(i) *Requirements for project owners.* In the second year after completion of a rental project and annually thereafter until the end of the project's retention period, the project owner must:

(A) Certify to the Bank that:

(1) The tenant rents and incomes are in compliance with the rent and income targeting commitments made in the AHP application; and

(2) The project is habitable; and

(B) Maintain documentation regarding tenant rents and incomes and project habitability available for review by the Bank, to support such certifications.

(ii) *Requirements for members.* For rental projects receiving \$500,000 or less in AHP subsidy from a member, during the period from the second year after project completion to the end of the project's retention period, the member must certify to the Bank at least once every three years, based on an exterior visual inspection, that the project appears to be suitable for occupancy.

(iii) *Requirements for Banks—(A) Certifications received by the Bank.* Each Bank shall review certifications provided by project owners and members regarding tenant rents and incomes and project habitability.

(B) *Review of project documentation.* Each Bank shall review documentation maintained by the project owner regarding tenant rents and incomes and project habitability to verify compliance with the rent and income targeting commitments in the AHP application and project habitability, according to the following schedule:

(1) *\$50,001 to \$250,000.* For projects receiving \$50,001 to \$250,000 of AHP subsidies, the Bank must review project documentation for a sample of the project's units at least once every six years;

(2) *\$250,001 to \$500,000.* For projects receiving \$250,001 to \$500,000 of AHP subsidies, the Bank must review project documentation for a sample of the project's units at least once every four years; and

(3) *Over \$500,000.* For projects receiving over \$500,000 of AHP subsidies, the Bank must perform an on-site review of project documentation for a sample of the project's units at least once every two years.

(C) *Sampling plan.* A Bank may use a reasonable sampling plan to select the projects monitored each year and to review the project documentation supporting the certifications made by members and project owners.

(iv) *Monitoring by a contractor.* A Bank, in its discretion, may contract with a third party to carry out the Bank's monitoring obligations set forth in paragraph (a)(3)(iii) of this section.

(b) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application

Federal Housing Finance Board

§ 951.12

as long as the rent charged remains affordable, as defined in § 951.1, for the household occupying the unit.

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§ 951.12 Remedial actions for non-compliance.

(a) *Repayment of subsidies by members*—(1) *Noncompliance by member.* A member shall repay to the Bank the amount of any subsidies (plus interest, if appropriate) that, as a result of the member's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(i) The member cures the noncompliance within a reasonable period of time; or

(ii) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to § 951.7.

(2) *Noncompliance by project sponsors or owners*—(i) *Duty to recover subsidies.* A member shall recover from the sponsor of an owner-occupied project or the owner of a rental project and repay to the Bank the amount of any subsidies (plus interest, if appropriate) that, as a result of the sponsor's or owner's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(A) The sponsor or owner cures the noncompliance within a reasonable period of time; or

(B) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to § 951.7.

(ii) *Limitation on duty to recover subsidies.* The member shall not be liable to the Bank for the return of amounts that cannot be recovered from the project sponsor or owner through reasonable collection efforts by the member.

(b) *Repayment of subsidies by project sponsors or owners.* A sponsor of an

owner-occupied project and the owner of a rental project shall repay to the member the amount of any subsidies (plus interest, if appropriate) that, as a result of the sponsor's or owner's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(1) The sponsor or owner cures the noncompliance within a reasonable period of time; or

(2) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to § 951.7.

(c) *Requirements for Banks*—(1) *Duty to recover subsidies.* A Bank shall recover from a member:

(i) The amount of any subsidies (plus interest, if appropriate) that, as a result of the member's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part; and

(ii) The amount of any subsidies recovered by a member from the sponsor of an owner-occupied project or the owner of a rental project pursuant to the requirements of paragraph (a)(2) of this section.

(2) *Settlements.* A Bank may enter into an agreement or other arrangement with a member for the purpose of settling claims against the member for repayment of subsidies. If a Bank enters into a settlement that results in the return of a sum that is less than the full amount of any AHP subsidy that is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, the Bank may be required by the Finance Board to reimburse its AHP fund in the amount of any shortfall under paragraph (c)(3) of this section, unless:

(i) The Bank has sufficient documentation showing that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts); or

(ii) The Bank obtains a determination from the Board of Directors that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts).

(3) *Reimbursement of AHP fund.* The Finance Board may order a Bank to reimburse its AHP fund in an appropriate amount upon determining that:

(i) As a result of the Bank's actions or omissions, AHP subsidy is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part; or

(ii) The Bank has failed to recover AHP subsidy from a member pursuant to the requirements of paragraph (c)(1) of this section, and has not shown such failure is reasonably justified, considering factors such as the extent of the Bank's recovery efforts.

(d) *Parties to enforcement proceedings.* A Bank, in its AHP implementation plan, may provide for a member, project sponsor, or project owner to enter into a written agreement with a Bank under which such member, sponsor, or owner consents to be a party to any enforcement proceeding initiated by the Finance Board regarding the repayment of AHP subsidies received by such member, sponsor, or owner, or the suspension or debarment of such parties, provided that the member, sponsor, or owner has agreed to be bound by the Finance Board's final determination in the enforcement proceeding.

(e) *Use of repaid subsidies—(1) Use of repaid AHP subsidies in other AHP-eligible projects.* Except as provided in paragraph (e)(2) of this section, amounts of AHP subsidy, including any interest, repaid to a Bank pursuant to this part shall be made available by the Bank for other AHP-eligible projects.

(2) *Re-use of repaid AHP direct subsidies in same project.* AHP direct subsidy, including any interest, repaid to a member or project sponsor under a homeownership set-aside program or the competitive application program, respectively, may be repaid by such parties to the Bank for subsequent disbursement to and re-use by such parties,

or retained by such parties for subsequent re-use, as authorized by the Bank, in its discretion, in its AHP implementation plan, provided all of the following requirements are satisfied:

(i) The member or the project sponsor originally provided the direct subsidy as downpayment, closing cost, rehabilitation or interest rate buydown assistance to an eligible household to purchase or rehabilitate an owner-occupied unit pursuant to an approved AHP application;

(ii) The AHP direct subsidy, including any interest, was repaid to the member or project sponsor as a result of a sale by the household of the unit prior to the end of the retention period to a purchaser that is not a low-or moderate-income household; and

(iii) The repaid AHP direct subsidy is made available by the member or project sponsor, within the period of time specified by the Bank in its AHP implementation plan, to another AHP-eligible household to purchase or rehabilitate an owner-occupied unit in the same project in accordance with the terms of the approved AHP application.

(f) *Suspension and debarment—(1) At a Bank's initiative.* A Bank may suspend or debar a member, project sponsor, or owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an application for AHP subsidy or the requirements of this part.

(2) *At the Finance Board's initiative.* The Finance Board may order a Bank to suspend or debar a member, project sponsor, or owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an application for AHP subsidy or the requirements of this part.

(g) *Transfer of Program administration.* Without limitation on other remedies, the Finance Board, upon determining that a Bank has engaged in mismanagement of its Program, may designate another Bank to administer all or a portion of the first Bank's annual AHP contribution, for the benefit of the first Bank's members, under such

Federal Housing Finance Board

§ 951.13

terms and conditions as the Finance Board may prescribe.

(h) *Finance Board actions under this section.* Except as provided in paragraph (c)(2)(ii) of this section, actions taken by the Finance Board pursuant to this section shall be subject to the Finance Board's procedures for review of disputed supervisory determinations set forth in § 907.9 of this chapter.

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27673, May 20, 1998; 65 FR 8264, Feb. 18, 2000; 67 FR 12852, Mar. 20, 2002; 67 FR 18805, Apr. 17, 2002]

§ 951.13 Agreements.

(a) *Agreements between Banks and members.* A Bank shall have in place with each member receiving a subsidized advance or direct subsidy an agreement or agreements containing the provisions set forth in this section.

(b) *General provisions—*(1) *Subsidy pass-through.* The member shall pass on the full amount of the AHP subsidy to the project, or household in the case of homeownership set-aside funds, for which the subsidy was approved.

(2) *Use of subsidy—*(i) *Use of subsidy by the member.* The member shall use the AHP subsidy in accordance with the terms of the member's application for the subsidy, as approved by the Bank, and the requirements of this part.

(ii) *Use of subsidy by the project sponsor or owner.* The member shall have in place an agreement with the sponsor of an owner-occupied project and each owner of a rental project in which the sponsor or owner agrees to use the AHP subsidy in accordance with the terms of the member's application for the subsidy, as approved by the Bank, and the requirements of this part.

(3) *Repayment of subsidies in case of noncompliance—*(i) *Noncompliance by the member.* The member shall repay subsidies to the Bank in accordance with the requirements of § 951.12(a)(1).

(ii) *Noncompliance by a project sponsor or owner—*(A) *Agreement.* The member shall have in place an agreement with the sponsor of an owner-occupied project and each owner of a rental project in which the sponsor or owner agrees to repay AHP subsidies in accordance with the requirements of § 951.12(b).

(B) *Recovery of subsidies.* The member shall recover from the project sponsor or owner and repay to the Bank any subsidy in accordance with the requirements of § 951.12(a)(2).

(4) *Project monitoring—*(i) *Monitoring by the member.* The member shall comply with the monitoring requirements of §§ 951.10(b) and 951.11(a)(3)(ii).

(ii) *Monitoring by the project sponsor.* The member shall have in place an agreement with the sponsor of an owner-occupied project in which the sponsor agrees to comply with the monitoring requirements of § 951.10(a)(1).

(iii) *Monitoring by the project owner.* The member shall have in place an agreement with the owner of a rental project in which the owner agrees to comply with the monitoring requirements of §§ 951.10(a)(2) and 951.11(a)(3)(i).

(5) *Transfer of AHP obligations to another member.* The member will make best efforts to transfer its obligations under the approved application for AHP subsidy to another member in the event of its loss of membership in the Bank prior to the Bank's final disbursement of AHP subsidies.

(c) *Special provisions where members obtain subsidized advances—*(1) *Repayment schedule.* The term of the subsidized advance shall be no longer than the term of the member's loan to the project funded by the advance, and at least once in every 12-month period, the member shall be scheduled to make a principal repayment to the Bank equal to the amount scheduled to be repaid to the member on its loan to the project in that period.

(2) *Prepayment fees.* Upon a prepayment of the subsidized advance, the Bank shall charge a prepayment fee only to the extent the Bank suffers an economic loss from the prepayment.

(3) *Treatment of loan prepayment by project.* If all or a portion of the loan or loans financed by a subsidized advance are prepaid by the project to the member, the member may, at its option, either:

(i) Repay to the Bank that portion of the advance used to make the loan or loans to the project, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any economic

loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance; or

(ii) Continue to maintain the advance outstanding, subject to the Bank resetting the interest rate on that portion of the advance used to make the loan or loans to the project to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance.

(4) *Retention agreements for owner-occupied units*—(i) *Units with AHP-assisted permanent financing*. The member shall ensure that an owner-occupied unit with permanent financing obtained from the proceeds of a subsidized advance is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(A) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(B) In the case of a refinancing prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner occupied the unit prior to refinancing, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (c)(4)(i); and

(C) The obligation to repay AHP subsidy to the Bank shall terminate after any foreclosure.

(ii) *Units constructed or rehabilitated with AHP-assisted financing*. The member shall ensure that an owner-occupied unit constructed or rehabilitated with a loan from the proceeds of a subsidized advance but which does not have permanent financing from the proceeds of a subsidized advance, is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(A) The Bank or its designee is to be given notice of any sale or refinancing

of the unit occurring prior to the end of the retention period;

(B) In the case of a sale prior to the end of the retention period, an amount equal to the pro rata portion of the interest rate subsidy imputed to the subsidized advance that financed the construction or rehabilitation loan for the unit, reduced for every year the seller owned the unit, shall be repaid to the Bank from any net gain realized upon the sale of the unit after deduction for sales expenses, unless the purchaser is a low- or moderate-income household;

(C) In the case of a refinancing prior to the end of the retention period, an amount equal to the pro rata portion of the interest rate subsidy imputed to the subsidized advance that financed the construction or rehabilitation loan for the unit, reduced for every year the owner occupied the unit, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (c)(4)(ii); and

(D) The obligation to repay AHP subsidy to the Bank shall terminate after any foreclosure.

(5) *Retention agreements for rental projects*. The member shall ensure that a rental project financed by a loan from the proceeds of a subsidized advance is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period;

(ii) The Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the retention period;

(iii) In the case of a sale or refinancing of the project prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner owned the project prior to the sale or refinancing, shall

be repaid to the Bank, unless the project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the AHP application for the duration of the retention period; and

(iv) The income-eligibility and affordability restrictions applicable to the project terminate after any foreclosure.

(6) *Transfer of AHP obligations to a nonmember.* If, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the member's obligations under its approved application for AHP subsidy upon prepayment or orderly liquidation by the nonmember of the subsidized advance.

(d) *Special provisions where members obtain direct subsidies—(1) Retention agreements for owner-occupied units.* The member shall ensure that an owner-occupied unit that is purchased, constructed, or rehabilitated with the proceeds of a direct subsidy is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(ii) In the case of a sale of the unit prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the seller owned the unit, shall be repaid to the following parties, as applicable, from any net gain realized upon the sale of the unit after deduction for sales expenses, unless the purchaser is a low- or moderate-income household:

(A) To the Bank: If the Bank has not authorized re-use of the repaid subsidy pursuant to § 951.12(e)(2); if the Bank has authorized re-use of the repaid subsidy but not retention of such subsidy by the member or project sponsor pursuant to § 951.12(e)(2); or if the Bank has authorized retention and re-use of

such subsidy by the member or project sponsor pursuant to § 951.12(e)(2) and the repaid subsidy is not re-used in accordance with the requirements of the Bank and § 951.12(e)(2); or

(B) To the member or project sponsor for re-use by such member or project sponsor, if the Bank has authorized retention and re-use of such subsidy by the member or project sponsor pursuant to § 951.12(e)(2);

(iii) In the case of a refinancing prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the occupying household has owned the unit, shall be repaid to the following parties, as applicable, from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (d)(1):

(A) To the Bank: If the Bank has not authorized re-use of the repaid subsidy pursuant to § 951.12(e)(2); if the Bank has authorized re-use of the repaid subsidy but not retention of such subsidy by the member or project sponsor pursuant to § 951.12(e)(2); or if the Bank has authorized retention and re-use of such subsidy by the member or project sponsor pursuant to § 951.12(e)(2) and the repaid subsidy is not re-used in accordance with the requirements of the Bank and § 951.12(e)(2); or

(B) To the member or project sponsor for re-use by such member or project sponsor, if the Bank has authorized retention and re-use of such subsidy by the member or project sponsor pursuant to § 951.12(e)(2); and

(iv) The obligation to repay AHP subsidy to the Bank, or to the member or project sponsor, as applicable, shall terminate after any foreclosure.

(2) *Retention agreements for rental projects.* The member shall ensure that a rental project financed by the proceeds of a direct subsidy is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The project's rental units, or applicable portion thereof, must remain

occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period;

(ii) The Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the retention period;

(iii) In the case of a sale or refinancing of the project prior to the end of the retention period, an amount equal to the full amount of the direct subsidy shall be repaid to the Bank, unless the project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the AHP application for the duration of the retention period; and

(iv) The income-eligibility and affordability restrictions applicable to the project terminate after any foreclosure.

(3) *Lending of direct subsidies.* If a member or a project sponsor lends a direct subsidy to a project, any repayments of principal and payments of interest received by the member or the project sponsor must be paid forthwith to the Bank.

(4) *Transfer of AHP obligations to a nonmember.* If, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the member's obligations under its approved application for AHP subsidy.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069-0006 with an expiration date of June 30, 2004)

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27673, May 20, 1998; 65 FR 5419, Feb. 4, 2000; 65 FR 8264, Feb. 18, 2000; 67 FR 18805, Apr. 17, 2002]

§951.14 Temporary suspension of AHP contributions.

(a) *Application for temporary suspension—(1) Notification to Finance Board.* If a Bank finds that the contributions required pursuant to §951.2 are contrib-

uting to the financial instability of the Bank, the Bank shall notify the Finance Board promptly, and may apply in writing to the Finance Board for a temporary suspension of such contributions.

(2) *Contents.* A Bank's application for a temporary suspension of contributions shall include:

(i) The period of time for which the Bank seeks a suspension;

(ii) The grounds for a suspension;

(iii) A plan for returning the Bank to a financially stable position; and

(iv) The Bank's annual financial report for the preceding year, if available, and the Bank's most recent quarterly and monthly financial statements and any other financial data the Bank wishes the Finance Board to consider.

(b) *Board of Directors review of application for temporary suspension—(1) Determination of financial instability.* In determining the financial instability of a Bank, the Board of Directors shall consider such factors as:

(i) Whether the Bank's earnings are severely depressed;

(ii) Whether there has been a substantial decline in the Bank's membership capital; and

(iii) Whether there has been a substantial reduction in the Bank's advances outstanding.

(2) *Limitations on grounds for suspension.* The Board of Directors shall disapprove an application for a temporary suspension if it determines that the Bank's reduction in earnings is a result of:

(i) A change in the terms of advances to members which is not justified by market conditions;

(ii) Inordinate operating and administrative expenses; or

(iii) Mismanagement.

(c) *Board of Directors decision.* The Board of Directors' decision shall be in writing and shall be accompanied by specific findings and reasons for its action. If the Board of Directors approves a Bank's application for a temporary suspension, the Board of Directors' written decision shall specify the period of time such suspension shall remain in effect.

(d) *Monitoring.* During the term of a temporary suspension approved by the Board of Directors, the affected Bank

Federal Housing Finance Board

§ 951.16

shall provide to the Board of Directors such financial reports as the Board of Directors shall require to monitor the financial condition of the Bank.

(e) *Termination of suspension.* If, prior to the conclusion of the temporary suspension period, the Board of Directors determines that the Bank has returned to a position of financial stability, the Board of Directors may, upon written notice to the Bank, terminate the temporary suspension.

(f) *Application for extension of temporary suspension period.* If a Bank's board of directors determines that the Bank has not returned to, or is not likely to return to, a position of financial stability at the conclusion of the temporary suspension period, the Bank may apply in writing for an extension of the temporary suspension period, stating the grounds for such extension.

[62 FR 41828, Aug. 4, 1997, as amended at 65 FR 8264, Feb. 18, 2000]

§ 951.15 Affordable Housing Reserve Fund.

(a) *Reserve Fund—(1) Deposits.* If a Bank fails to use or commit the full amount it is required to contribute to the Program in any year pursuant to § 951.2, 90 percent of the unused or uncommitted amount shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Finance Board. The remaining 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion must be deposited in the Affordable Housing Reserve Fund.

(2) *Use or commitment of funds.* Approval of applications for AHP subsidies sufficient to exhaust the amount a Bank is required to contribute pursuant to § 951.2 shall constitute use or commitment of funds. Amounts remaining unused or uncommitted at year-end are deemed to be used or committed if, in combination with AHP subsidies that have been returned to the Bank or de-committed from canceled projects, they are insufficient to fund:

(i) The next highest scoring AHP application in the Bank's final funding

period of the year for its competitive application program; or

(ii) Pending applications for funds under the Bank's homeownership set-aside programs;

(iii) Project modifications approved by the Bank pursuant to the requirements of this part.

(3) *Carryover of insufficient amounts.* Such insufficient amounts as described in paragraph (a)(2) of this section shall be carried over for use or commitment in the following year in the Bank's competitive application program or homeownership set-aside programs.

(b) *Annual statement.* By January 15 of each year, each Bank shall provide to the Finance Board a statement indicating the amount of unused and uncommitted funds from the prior year, if any, which will be deposited in the Affordable Housing Reserve Fund.

(c) *Annual notification.* By January 31 of each year, the Finance Board shall notify the Banks of the total amount of funds, if any, available in the Affordable Housing Reserve Fund.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069-0006 with an expiration date of June 30, 2004)

[62 FR 41828, Aug. 4, 1997, as amended at 65 FR 5419, Feb. 4, 2000; 65 FR 8264, Feb. 18, 2000; 66 FR 50302, Oct. 3, 2001]

§ 951.16 Application to existing AHP projects.

The requirements of section 10(j) of the Act (12 U.S.C. 1430(j)) and the provisions of this part, as amended, are incorporated into all agreements between Banks, members, sponsors, or owners receiving AHP subsidies. To the extent the requirements of this part are amended from time to time, such agreements are deemed to incorporate the amendments to conform to any new requirements of this part. No amendment to this part shall affect the legality of actions taken prior to the effective date of such amendment.

[62 FR 41828, Aug. 4, 1997, as amended at 67 FR 12852, Mar. 20, 2002]